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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,938	08/27/2003	Daniel John Smith	1171/39464A/99A-	6085
279	7590	04/07/2006		
TREXLER, BUSHNELL, GIANGIORGI, BLACKSTONE & MARR, LTD. 105 WEST ADAMS STREET SUITE 3600 CHICAGO, IL 60603			EXAMINER PATEL, NIHIR B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/649,938	SMITH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Nihir Patel	3743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on August 27<sup>th</sup>, 2003.

2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-10 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
       Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
       Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All    b) ☐ Some \*    c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>12.08.2003</u>	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____
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## DETAILED ACTION

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims **1-6** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims **1, 2, 3, 7 and 10** of U.S. Patent No. 6,662,802. Although the conflicting claims are not identical, they are not patentably distinct from each other because **claim 1 of the instant application** limitations can be found in claim 1 of patent '802 except for claim 1 of the instant application recites a limb as opposed to patented claim 1 of '802 which states "conduit"; because a limb and conduit are equivalent, it would have been obvious to use the word "limb" instead of "conduit". **With respect to claim 2 of the instant application**, the limitations can be found in claim 3 of patent '802. **With respect to claims 3 and 4 of the instant application**, the limitations can be found in claim 2 of patent '802. **With respect to**

**claims 5 and 6 of the current application**, the limitations can be found in claims 10, 9 and 7 of patent '802.

Claims **1, 2 and 5-10** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim **1** of U.S. Patent No. **6,769,431 in view of Chua (US 4,967,744)**. **Claims 1, 5 and 6 of the instant application**, claims 1 of patent '431 discloses all the features of claims 1, 5 and 6 of the instant application with the exception of providing a heating means located within the conduit, the heating means comprising an elongate heating element. Chua discloses an apparatus that does provide a heating means located within the conduit, the heating means comprising an elongate heating element. Therefore it would have been obvious to modify patent '431 by providing a heating means located within the conduit, the heating means comprising an elongate heating element as taught by Chua in order to reduce heat transfer thereby reducing rainout. **With respect to claims 2 and 7-10 of the instant application**, the limitations can be found in claim 1 of patent '431.

Claims **1, 2, 7 and 9** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims **1, 11 and 17** of copending Application No. **10/622,755** in view of **Chua US (US 4,967,744)**. **Claim 1 of the instant application**, claim 1 of application 10/622,755 discloses all the features of claim 1 of the instant application with the exception of providing a heating means located within the conduit, the heating means comprising an elongate heating element. Chua discloses an apparatus that does provide a heating means located within the conduit, the heating means comprising an elongate heating element. Therefore it would have been obvious to modify application 10/622,755 by providing a heating means located within the conduit, the heating means comprising an elongate

heating element as taught by Chua in order to reduce heat transfer thereby reducing rainout.

**Claim 2 of the instant application**, limitations can be found in claim 1 of application

10/622,755. **Claim 7 of the instant application**, limitations can be found in claim 11 of

application 10/622,755. **Claim 9 of the instant application**, limitations can be found in claim 17 of application 10/622,755.

Claims 1-3 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3 and 4 of copending Application No. 10/684,917. Although the conflicting claims are not identical, they are not patentably distinct from each other because **claim 1 of the instant application** limitations can be found in claim 1 of patent '802 except for claim 1 of the instant application recites a limb as opposed to patented claim 1 of '802 which states "conduit"; because a limb and conduit are equivalent, it would have been obvious to use the word "limb" instead of "conduit". **Claim 2 of the instant application**, the limitations can be found in claim 4 of application 10/684,917. **Claim 3 of the instant application**, the limitations can be found in claim 3 of application 10/684,917.

Claims 5 and 6 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 12 of copending Application No. 10/684,917 in view of Chua US (US 4,967,744). **Claims 5 and 6 of the instant application**, claim 12 of application 10/684,917 discloses all the features of claims 5 and 6 of the instant application with the exception of providing a heating means located within the conduit, the heating means comprising an elongate heating element. Chua discloses an apparatus that does provide a heating means located within the conduit, the heating means comprising an elongate heating element. Therefore it would have been obvious to modify application 10/684,917 by providing a heating

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means located within the conduit, the heating means comprising an elongate heating element as taught by Chua in order to reduce heat transfer thereby reducing rainout.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

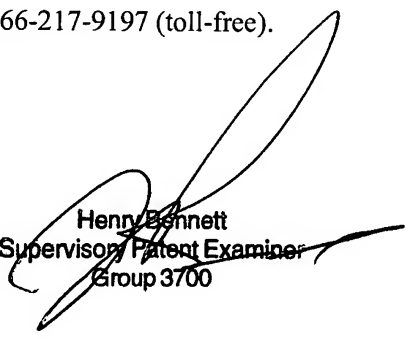
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nihir Patel  
Art Unit 3743

  
Henry Bennett  
Supervisory Patent Examiner  
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